

## CLIENT ALERT

March 2008

### Tax News, Views and Clues

#### **FBT and Minor Benefits**

In a recent Taxation Ruling, the Commissioner expressed that a fringe benefit provided by an employer to their employees (or associate) will only attract the minor benefits exemption where:

- the notional taxable value of each benefit is less than \$300; and
- having regard to the circumstances, including a consideration of the infrequency and irregularity, it would be unreasonable to treat the benefit as a fringe benefit.

Further, the Ruling states that even if the notional taxable value of a benefit is less than \$300, the benefit is not necessarily an exempt benefit. There are certain fringe benefits that are specifically excluded from the operation of the minor benefits exemption.

If the minor benefits exemption applies to a benefit, no FBT liability arises from the provision of that benefit.

#### **Wash Sale Arrangements**

The Tax Office has stated recently in a Taxation Ruling that the

Commissioner may make a determination to cancel any tax benefits obtained in connection with a 'wash sale' arrangement. Whether the Commissioner makes a determination to cancel any tax benefits obtained will depend on the facts of the particular situation.

An arrangement where a taxpayer disposes of an asset in order to apply a resulting capital loss against a capital gain previously incurred (or deduction against assessable income), and both capital assets are significantly similar, may attract the Commissioner's adverse attention.

#### **Provision Of Trade Credit**

The recently released Taxation Determination TD 2008/1 discusses the consequences of a private company providing trade credit to a shareholder (or their associate) on the usual terms it gives to parties at arm's length, and the shareholder fails to repay an amount within the agreed payment term. The Tax Office states that provided the private company deals with the failure to repay in the same manner in which it deals with defaults on similar loans made to parties at arm's length, the tax law does not automatically deem that a loan has

been made by the private company to the shareholder (or their associate).

If the private company does not deal with a failure to repay on time by a shareholder (or their associate) in the same manner in which it deals with defaults of similar loans made to parties at arm's length, potentially a loan can be deemed to have been made.

A private company may be taken to pay a dividend at the end of the company's income year if it lends an amount to a shareholder (or their associate) during the year.

The dividend needs to be included in the assessable income of the shareholder (or their associate) as an unfranked dividend. (The definition of loan includes the provision of credit or any other form of financial accommodation.)

However, if the shareholder (or their associate) fully repays the amount by the earlier of either the due date for lodgement of the private company's tax return for the income year or the lodgement day of the private company's tax return for the income year, a loan does not arise between the private company and the shareholder (or their associate).

## Timing Of Receipts

The Tax Office has issued a Self Managed Superannuation Funds (SMSF) Determination that provides its view on the timing of when a dividend or trust distribution is received by a SMSF for the purposes of the in-house asset rules. The Determination states that the timing depends on the payment option that is either chosen by the SMSF or prescribed by the company or trust respectively.

The in-house asset rules govern the proportion of a superannuation fund's assets that may be lent by the trustee to or invested in an employer-sponsor of the fund or an associate of the employer. The rules state that a trustee of a superannuation fund must not acquire in-house assets if to do so would increase the ratio of such assets to over 5% of total assets, or if the ratio already exceeds 5%.

However, transitional provisions can apply to exclude investments in related entities as being in-house assets. One of the transitional provisions seeks to exclude investment made in related entities between 12 August 1999 and 30 June 2009 as being classified as in-house assets. This transitional provision requires a taxpayer to test when a dividend or trust distribution is received by the SMSF.

## Alert On Stapled Securities

The Tax Office has issued a Taxpayer Alert warning taxpayers investing in stapled securities that it is considering whether they are entitled to a deduction when the stapled securities are sold on the ASX at a loss, or on the occurrence of an Assignment Event.

In particular, the Tax Office is considering whether the structure of a stapled security constitutes a scheme to obtain a tax benefit therefore denying any deductions arising from its disposal.

A stapled security is an arrangement where a company issues a security consisting of a note and a preference share to resident investors. The Tax Office said that in these arrangements the company issuing the securities suggests that an investor may claim deductions for losses in certain circumstances. These circumstances include the assignment, transfer or surrender of the note, or conversion or disposal of the stapled security.

## UK War Widows pension

In two separate but related Interpretative Decisions, the Tax Office expresses its view that the UK War Widows pension and supplementary pension received by a taxpayer are not assessable income for the purpose of Australian tax. This is because the pensions are similar to a pension for defence caused death or incapacity paid under the Veterans' Entitlement Act, which is listed as an exempt payment for income tax purposes.

## Entrepreneurs' Tax Offset

### Partners in a partnership

In a recent Interpretative Decision, the Tax Office states its view that a taxpayer whose assessable income includes personal services income (PSI), which is attributed to being a partner in a partnership that is not conducting a personal services business (PSB), is

entitled to the entrepreneurs' tax offset (ETO).

## Company and eligibility

In another recent Interpretative Decision, the Tax Office has provided its view that a company that is not conducting a PSB is entitled to the ETO. However, if the company is only deriving PSI, the ETO will be nil. This is because any PSI derived by a company does not form part of its assessable income but is included in the assessable income of the individual generating the PSI.

## ETO and PSI

The ETO is available to eligible taxpayers. The offset is equal to 25% of the income tax liability that is attributed to a small business entity income. If the annual turnover is more than \$50,000, the offset is phased out until it equals zero at turnover of \$75,000.

PSI is income that is mainly derived from an individual's personal exertion. The income can be derived either directly by the individual or indirectly through an interposed entity (company, trust or partnership). However, the PSI regime does not apply when an individual is carrying on a PSB.

## Tax Office Assistance

In two separate but related media releases, the Tax Office has stated that farmers, businesses and individuals who are experiencing difficulty in complying with their tax obligations as a consequence of the drought, floods, bushfires and storms to contact its office either through their tax agents or directly.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.